IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-1449

OZORA E. SALMON, THREE PARCELS OF LAND IN SQUARE 556, IN THE DISTRICT OF COLUMBIA,

Petitioner,

v.

DISTRICT OF COLUMBIA REDEVELOPMENT LAND AGENCY, a body corporate,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

CLEMENT THEODORE COOPER, ESQUIRE
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I.

Petitioner, Ozora Salmon, petitions this Court for a Writ of Certiorari to Review the Judgment of the United States Court of Appeals for the District of Columbia Circuit.

II.

OPINIONS BELOW

The Judgment and Memorandum of the United States Court of Appeals for the District of Columbia Circuit is printed in the Appendix to this Petition 16a through 19a. The Judgment and Memorandum of the United States District Court, upon which the Court of Appeals judgment is based, is printed in the appendix to this Petition 1a through 10a.

III.

JURISDICTION

The Judgment of the United States Court of Appeals for the District of Columbia Circuit was dated and entered on Nov. 10, 1976. The jurisdiction of this Court is invoked under 28 U.S.C. 1234(1).

IV.

QUESTIONS PRESENTED

1. Whether or not the affirmation by the United States Court of Appeals for the District of Columbia Circuit, in affirming summarily, the Judgment and Order of the United States District Court which was superimposed on a Judgment granting Condemnation, was violative of the Fair Housing Act, 42 U.S.C. 3601, *et seq.* and the Equal Protection Clause of the Fourteenth Amendment?

2. Whether or not, under the exercise of Eminent Domain, a government agency may engage in exchange and proprietary interplay by leasing or selling condemned property to a private redeveloper which is clearly controlled by a religious body without violating petitioner's protection under the First Amendment of the Constitution which forbids direct or indirect participation by government in religious activities?
3. Whether the taking, under eminent domain, by a governmental agency, at the instance of and urgence of a religious body, constitutes a taking for public use within the meaning of the Fifth Amendment of the Constitution, where the specified purpose of the taking is to use condemned property as a private extension to a Church Parking Lot facility?

V.

CONSTITUTIONAL PROVISIONS

1. Fifth Amend., U.S. Const.
2. First Amend., U.S. Const.
3. Fourteenth Amend., U.S. Const.

VI.

STATUTES INVOLVED

1. 42 U.S.C. 3601, et seq.
2. 5 D.C. Code 701, et seq., 1973 edition.

VII.

STATEMENT OF THE CASE

Petitioner, Ozora Salmon, was the owner of Lots 801, and 802 in Square 556, 205-107 L Street, N.W., in the District of Columbia. The real property is situated in what is described, under urban renewal concepts, as the Northwest Urban Renewal Area Project Number 1.

On June 28, 1974, the District of Columbia Redevelopment Land Agency initiated an action to take the property, under eminent domain, by filing a declaration of taking in the United States District Court for the District of Columbia. On November 7, 1974, Petitioner filed an Answer in the U.S. District Court challenging the Agency's Taking of her Property. The Respondent, D.C.R.L.A., filed a Motion for Summary Judgment and Petitioner filed an Opposition thereto. On April 17, 1975, the District Court, in a Memorandum Opinion, (Appendix 1a), granted the Respondent's Motion for Summary Judgment.

On June 23, 1976, the District Court entered an Order for Delivery of Possession of Parcel No. NW1-556-836. (Appendix herein). On July 26, 1976, Petitioner filed a Notice of Appeal to the United States Court of Appeals. Petitioner filed a Motion for Stay of the Order for Delivery of Possession. On July 30, 1976, the District Court denied the Motion for Stay. (Appendix 11a-12a).

On September 30, 1976, Respondent filed a Motion for Summary Affirmance in the United States Court of Appeals. Petitioner filed an Opposition with Memorandum of Points and Authorities. On November 10, 1976, the United States Court of Appeals entered a Judgment

and Order granting Respondent's Motion for Summary Affirmance. (Appendix 16a-17a).

It is from that final judgment and Order that Petitioner seeks Certiorari to the United States Court of Appeals for the District of Columbia Circuit.

VIII.

STATEMENT OF FACTS

For purposes of factual consistency, petitioner adopts the facts, hic verba, as found by the United States District Court Judge in granting Respondent's Motion for Summary Judgment.

In 1963, an urban renewal plan for the Northwest One Area of the City was promulgated, but did not, as originally drawn, encompass Petitioner's property. By modification #1 dated October 12, 1967, the boundaries of the project area were expanded to take in Petitioner's property. Although this modification authorized D.C.R.L.A. to bring proceedings to condemn the property when it deemed it appropriate to do so, its overall plan called for this particular piece of property to be used for "medium density housing" and since construction of such project was not eminent, D.C.R.L.A. did not institute an action to take the property at that time.

Beginning in 1971, Bishop Smallwood E. Williams, pastor of the Bibleway Church which is located in the immediate area of Ms. Salmon's property, began to request certain changes in the urban renewal plan in order to permit the expansion of the church. Ms. Salmon was aware of at least some of Rev. Williams'

efforts in this direction, since for many years she had been his private secretary and typed at least some of his letters to the National Capitol Planning Commission regarding the proposed change.

On May 3, 1973, the National Capitol Planning Commission (NCPC) approved and sent to the City Council the modification of the plan Rev. Williams had been seeking. The upshot of this change was to alter the planned use of the parcel now owned by Ms. Salmon for "medium density housing" to "semi-public" so that the church parking lot might be expanded into the area her residence and small restaurant now occupy. In advocating approval of the change, the staff of NCPC relied at least in part on the proximity of the right of way for the proposed Center Leg Freeway. Construction and operation of the freeway, it was felt, would subject any housing project built on the site to severe noise and possible pollution problems in 1990.

On September 12, 1973, the Committee on Urban Renewal Plans of the City Council held hearings on the proposed modification, following appropriate notice to the public by publication in the Washington Star Newspaper, see D.C. Code 5-711. Ms. Salmon appeared with counsel at that hearing and stated her position, as did Rev. Williams. Nonetheless, on October 2, 1973, the Council approved the change of modification #17 to the urban renewal plan. As a result of the change in use, this action has been brought to take Petitioner's property immediately, rather than allowing her to remain there indefinitely as DCRLA might have been expected to do had the approved use for the property remained "medium density housing."

A number of grounds were set forth earlier in opposition to DCRLA's right to take but all save three

have now been abandoned. Petitioner contended (1) that the action of NCPC was "capricious and arbitrary" in approving the modification, in that it now appears from various newspaper reports that the freeway may not in fact be built, see, e.g., "Freeway Money Eyed for Subway," Washington Post, Jan. 25, 1975, at A-1, Col. 1-2, (2) that the description of environmental impact filed in support of the modification is inadequate in that it fails to consider that the freeway might not be built; and (3) that the notice of the hearing given Petitioner by publication was in adequate to satisfy due process.

IX.

REASONS FOR GRANTING THE WRIT

I. The Petition presented to this Court encompasses a record which contains shades of *Village of Arlington Heights, et al. v. Metropolitan Housing Dev. Corporation,* No. 75-616, dec., Jan. 11, 1977. To be sure, the pattern and plan of rezoning for purposes of purported urban Housing redevelopment, through a religiously supported organization, constitutes a pattern of racial discrimination under disguise of the public use concept of Eminent Domain. Unlike *Village of Arlington Heights, supra,* where this Court held, inter alia, that "official action will not be held unconstitutional solely because it results in a racially disproportional impact. (Such) impact is not irrelevant, but it is not the sole touchstone of an invidious racial discrimination." *Washington v. Davis,* 426 U.S. 229 (1976), the District of Columbia consists of at least 60% of black

population. The City Planning Commission and Redevelopment Land Agency, and the City Counsel, all geared towards official action which affects 60% of the Black real property owners of the District, not alone the Petitioner. Continuous rezoning and condemnation of real property in the District of Columbia establishes a pattern of discrimination and taking of property under the disguise of Eminent Domain. This cycle will, no doubt, and if not ended, cause a transformation of unbalanced Ethnic Percentages in the Federal City.

This court has reasoned in *Washington v. Davis, supra,* that the impact of official action, whether it bears more heavily on one race than another, may provide an important starting point. As this Court further observed:

> "Sometimes a clear pattern unexplained on grounds other than race, emerges from the effect of state action even when the governing legislation appears neutral on its face. *Yick Wo v. Hopkins,* 118 U.S. 356 (1886); *Gunn v. United States,* 238 U.S. 347 (1915); *Lane v. Wilson,* 307 U.S. 268 (1939); *Gomillion v. Lightfoot,* 346 U.S. 339 (1960)."

The complete record in the lower court will furnish the evidentiary source needed in order to highlight the series of official action taken, for invidious purposes. *Lane v. Wilson, supra, Griffin v. County School Board,* 377 U.S. 218 (1964); *David v. Schnell,* 81 F. Supp. 872 (S.D. Ala.) *aff'd, per curiam,* 336 U.S. 933 (1949). While the record below is void of testimony of planning Commissioner officials, members of that Commission as well as officials of the District of Columbia Redevelopment Land Agency[1] could have been called or should

[1] District of Columbia Redevelopment Land Agency was named as a defendant in a law suit charging Fraud, filed in the Superior Court of the D.C., C.A. No. "Ozora Salmon v. Smallwood Williams v. D.C.R.L.A."

have been called to the stand, at trial, to testify concerning the purpose of its official action. *Tenny v. Brandhove,* 341 U.S. 367 (1951); *United States v. Nixon,* 418 U.S. 683, 705 (1974); *8 Wigmore, Evidence* #2371 (McNaughton rev. ed. 1961).

Conclusively, the District Courts action as affirmed by the Court of Appeals in upholding the Agency's action constituted a violation under the Fair Housing Act, 42 U.S.C. 3601, *et seq.*, and constituted, further, a violation of the equal protection clause of the Fourteenth Amendment of the United States Constitution.

II. The record before the Court will disclose that frequent negotiations took place between the Bishop of a Religious Sect and Public Officials. The record will further disclose that the real property in question was initially zoned for an acceptable public purpose, that is, for a leg of the proposed center freeway. Those plans were cancelled however. Thereafter, Petitioner's property became the subject of condemnation for another purpose, that is, private redevelopment by a religious organization and church for quasi-urban housing. The question presented, then is whether or not a private redeveloper may lease or purchase real property, after Condemnation which that Redeveloper urges and where the Developer, a religious organization, clearly designates that property and the immediate properties adjacent thereto, will be used as a church parking lot facility? The ultimate issue is whether the acquisition of private real property for church or religious purposes through the Eminent Domain powers of government constitutes an abridgement of Petitioner rights under the First Amendment of the Constitution and the Fourteenth Amendment as well?

The threshhold question is whether Petitioner has standing to invoke the Constitutional guarantee under First Amendment rights?

This Court has held that a Petitioner has no standing to invoke First Amendment rights pertaining to Religion unless Petitioner can demonstrate injury, offensive conduct or compulsion to accept religious dagma or practice or activities of any kind. *Doremus v. Board of Education*, 342 U.S. 429, 72 S. Ct. 394 (1952).

But petitioner can demonstrate injury to her property, the well-spring of her livelihood; offensive conduct and imposition, by compulsion, of religious intervention. Petitioner is not only a tax payer but a property owner as well. Consequently, Petitioner standing to invoke First Amendment rights is well-nigh conclusive. *Illinois ex rel. McCollum v. Board of Education*, 333 U.S. 203, 68 S. Ct. 461 (1948); *McGowan v. Maryland*, 366 U.S. 420, 81 S. Ct. 1101 (1961).

Accordingly, Petitioner does have the right to invoke the First Amendment Protection.

The ultimate issue raised by this Petition is indeed novel in that this, Court has for the first time, been confronted squarely with the issue. The gravity and wide flung effects of its resolution will lay to rest, for all times, the unpopular and urban practice, under the Eminent Domain veil of usurpation of citizens' rights to own real property for business purposes or as dwelling-places by religiously inspired institutions which dole out religion on the one hand and complete with secular corporate profit seekers on the other. It is indeed common knowledge that religious institutions ride spin-offs into other corporate ventures and thereafter seek Federal Funds to subsidize that corporate venture as a, vis-a-vis private redeveloper. The District Court

incorrectly interpreted the scope and effect of this Court's holding in *Berman, et al., Executors v. Parker, et al.*, 348 U.S. 26 (1954). Stated simplicter, this Court held in *Berman, supra,* that the D.C. Redevelopment Act of 1945 was constitutional under the powers of Eminent Domain, pursuant to a comprehensive plan prepared by an Administrative Agency for redevelopment so as to eliminate and prevent slum and substandard housing conditions, even though such property may later be sond or leased to other private interests subject to conditions designed to accomplish that purpose. This Court did not condone, nor did ti approve, the lease or sale of real property to Religious institutions or corporations controlled by religious institutions. To be sure, the Court did not authorize the use of private property for development as a church parking lot facility. What this Court did note was that the entire area in *Berman, supra,* "needed rezoning so that a balanced integrated plan could be developed for the region including not only new homes but also schools, *churches,* (emphasis supplied), parks, streets and shopping centers."

That observation was obiter dicta and not the holding in *Berman, supra.* This Court was not unmindful nor is petitioner unmindful of the realism that the construction of a church as part of total urban redevelopment, must be and rightfully should be considered as part of a redevelopment master plan. The Construction of a church, within the narrow framework of *Berman, supra,* most assuredly represents high visibility of the living church and its mission to provide salvation to many persons who might dwell within the redeveloped community. Nothing more than that.

The First Amendment of the United States Constitution provides as follows:

> "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press. . . .".

This court has applied the First Amendment rights to public school transportation,[2] compulsory attendance at school[3] and bible reading in schools.[4] The Court has not heretofore been called upon to apply First Amendment rights to the factual circumstances setforth in this petition. At best, the Court touched upon shades of the question in a matter pertaining to property controversies within the church. *Kedrolt v. St. Nicholas Cathedral,* 344 U.S. 94, 73 S. Ct. 143 (1952).

The Constitution (First Amendment as incorporated by the Fourteenth Amendment) prohibits State interference with the internal control of church administration. An enactment by a Legislature (or by the Congress of the U.S.) cannot validate action which the constitution prohibits. *Kedrolt v. St. Nicholas Cathedral, supra; Watson v. Jones,* (13 Wall 679) ( ); *Emerson v. Board of Education, supra.*

Decisions by the Judicial branch of Government which violates First Amendment of U.S. Constitution cannot be upheld. *Kreshik v. St. Nicholas Cathedral,*

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[2] *Emerson v. Bd. of Education,* 330 U.S. 1, 67 S. Ct. 504 (1947).

[3] *Pierce v. Society of Sisters,* 268 U.S. 510, 45 S. Ct. 571 (1925).

[4] *Gideons International v. Tudor,* 348 U.S. 816, 75 S. Ct. 25 (1954).

363 U.S. 190, 80 S. Ct. 1037 (1960). In this matter the Court does have the power to scrutinize state power or police power. *Nat. Assn. for Advancement of Colored People v. Alabama,* 357 U.S. 449, 78 S. Ct. 1163 (1958).

CONCLUSION

Fore the foregoing reasons, Petitioner respectfully requests that the Petition for Writ of Certiorari to review the Decision of the United States Court of Appeals for the District of Columbia be granted. That an Order to that effect be entered, and the Court below and Counsel be notified of the granting of the Petition.

Respectfully submitted,

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Attorney for Petitioner

APPENDIX

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

DISTRICT OF COLUMBIA REDEVELOPMENT LAND AGENCY, Plaintiff,	)	
v.	)	Civil Action No. 74-980
THREE PARCELS OF LAND IN SQUARE 556, ETC., ET AL., Defendants.	)	

MEMORANDUM AND ORDER

Plaintiff District of Columbia Redevelopment Land Agency (DCRLA) moved to strike, or in the alternative for summary judgment, on the issues raised by defendant Ozora E. Salmon, owner of Parcel NW1-556-836, in her answer challenging the right of DCRLA to take her property in this condemnation proceeding. The issues have been fully briefed and argued, after allowing defendant appropriate opportunities for discovery. The Court has concluded that summary judgment must be granted on the right-to-take issue in favor of DCRLA.*

*Because of the imminence of trial on the issue of just compensation, the Court indicated its decision to counsel at the close of oral argument on April 9, 1975, but reserved the right to file this memorandum of reasons.

DCRLA initiated this action by filing a declaration of taking on June 28, 1974, and depositing in the registry of the Court the amount estimated to the just compensation. *See* D.C. Code §§16-1351-53 (1973). The statutory authority for the taking is the District of Columbia Redevelopment Act of 1945, D.C. Code §§5-701 et seq.

The record shows that in 1963 an urban renewal plan for the Northwest One area of the city was duly promulgated, but did not, as originally drawn, encompass Ms. Salmon's property. By modification #1 dated October 12, 1967, the boundaries of the project area were expanded to take in Ms. Salmon's property. Although this modification authorized DCRLA to bring proceedings to condemn the property when it deemed it appropriate to do so, its overall plan called for this particular piece of property to be used for "medium density housing," and since construction of such a project was not imminent, DCRLA did not institute an action to take the property at that time.

Beginning in 1971, Bishop Smallwood E. Williams, pastor of the Bibleway Church which is located in the immediate area of Ms. Salmon's property, began to request certain changes in the urban renewal plan in order to permit the expansion of the church. Ms. Salmon was aware of at least some of Rev. Williams' efforts in this direction, since for many years she had been his private secretary and typed at least some of his letters to the National Capitol Planning Commission regarding the proposed change.

On May 3, 1973, the National Capitol Planning Commission (NCPC) approved and sent to the City Council the modification of the plan Rev. Williams had been seeking. The upshot of this change was to alter

the planned use of the parcel now owned by Ms. Salmon from "medium density housing" to "semi-public" so that the church parking lot might be expanded into the area her residence and small restaurant now occupy. In advocating approval of the change, the staff of NCPC relied at least in part on the proximity of the right of way for the proposed Center Leg Freeway. Construction and operation of the freeway, it was felt, would subject any housing project built on the site to severe noise and possible pollution problems in 1990.

On September 12, 1973, the Committee on Urban Renewal Plans of the City Council held hearings on the proposed modification, following appropriate notice to the public by publication in the *Washington Star* newspaper, *see* D.C. Code §5-711. Ms. Salmon appeared with counsel at that hearing and stated her position, as did Rev. Williams. Nonetheless, on October 2, 1973, the Council approved the change as modification #17 to the urban renewal plan. As a result of the change in use, this action has been brought to take Ms. Salmon's property immediately, rather than allowing her to remain there indefinitely as DCRLA might have been expected to do had the approved use for the property remained "medium density housing."

A number of grounds were set forth earlier in opposition to DCRLA's right to take but all save three have now been abandoned. Ms. Salmon now contends (1) that the action of NCPC was "capricious and arbitrary" in approving the modification, in that it now appears from various newspaper reports that the freeway may not in fact be built, *see, e.g.*, "Freeway Money Eyed for Subway," *Washington Post*, Jan. 25, 1975, at A-1, col. 1-2; (2) that the description of

environmental impact filed in support of the modification is inadequate in that it fails to consider that the freeway might not be built; and (3) that the notice of the hearing given Ms. Salmon by publication was inadequate to satisfy due process.

Ms. Salmon's property is clearly being taken for a "public purpose": the Supreme Court has specifically upheld urban renewal plans which provide "not only new homes but also schools, *churches,* parks streets and shopping centers." [Emphasis added.] *Berman v. Parker*, 348 U.S. 26, 35 (1954). Beyond assuring itself that the legislative authority for the taking is regular on its face, and that the property is being taken for a "public purpose," the judicial role in reviewing the decision to take a particular property is narrow indeed. *See* 1 Nichols, *Eminent Domain* (3d ed. 1974) §4.11. Moreover, the agency has clear discretionary authority as to the time of taking. *See Goddard v. District of Columbia Redevelopment Land Agency*, 109 U.S. App. D.C. 304, 306, 287 F.2d 343 (1961); D.C. Code §16-1352.

Assuming that the judiciary may review an administrative decision to condemn a particular property on the grounds that it is arbitrary, capricious, or in bad faith – a proposition on which the Supreme Court has specifically declined to rule, *United States v. Carmack*, 329 U.S. 230, 243-4 (1946) – the Court has determined that there was no such abuse of discretion here. The agency was entitled to weigh, among other factors, the risk that the site might become subject to excessive noise from highway construction and thus unsuitable for housing at a time quite far off in the future. Decisions relating to highway construction necessarily involve a degree of uncertainty, but prudent

plans must nonetheless take them into account. *Cf. Rindge Co. v. Los Angeles County*, 262 U.S. 700, 707 (1923).

Turning to the environmental issue, it is settled that Ms. Salmon, whose property was to be taken at some point in any case, has no standing to object on the grounds that the "description of environmental impact" did not adequately consider the possibility that the highway might not be built. *Sidney S. Zlotnick v. District of Columbia Redevelopment Land Agency*, C.A. No. 1700-71 (D.D.C., March 3, 1972), *affirmed*, 494 F.2d 1157 (D.C. Cir. 1974), *cert. denied*, 43 U.S.L.W. 3248 (U.S. Oct. 29, 1974) (No. 73-1903); *Glinton Community Hospital Corp. v. So. Maryland Medical Center*, 374 F. Supp. 450 (D.C. Md.), *affirmed*, (No. 74-1688) (4th Cir. Feb. 10, 1975). Moreover, the modification of the urban renewal plan at issue in this case presents no genuine environmental issues in any event.

Finally, Ms. Salmon argues that the notice she received relating to the modification was insufficient to comply with due process. *See Miles v. District of Columbia*, No. 73-2250 (D.C. Cir. March 21, 1975); *see also, Schroeder v. City of New York*, 371 U.S. 208 (1962); *Walker v. City of Hutchinson*, 352 U.S. 112 (1956); *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 304 (1950). Notice was made by publication pursuant to the statute.* However, in addition, Ms.

*Until amended in 1958 by §14 of Pub. L. 85-854, 72 Stat. 1102, D.C. Code §5-711 required mail notice to property owners in the area affected by proposed modifications of the urban renewal plan. The legislative history indicates no reason for the change other than that "comparable Federal and State statutes do not normally contain such a requirement." H.R. Rept. No. 2500, 85th Cong., 2d Sess. 4 (1958).

Salmon was given personal notice by telephone the night before the City Council hearing and appeared, represented by counsel, at that hearing. Because such a hearing is the last opportunity under the statutory scheme for a property owner to object on policy grounds to the wisdom of his property being taken, it may well be a stage having sufficient "finality" under *Miles, supra,* to require personal notice to those whose right to remain in their property will be directly affected by the proposed modification. However that may be, Ms. Salmon cannot complain as she did appear and make her position known.**

The statutory authority of the plaintiff to take this property being clear, and the defendant having failed to make out her defenses, summary judgment in favor of DCRLA on the issue of the propriety of the taking is therefore appropriate.

SO ORDERED.

April 17, 1975.

/s/ [illegible]
UNITED STATES DISTRICT JUDGE

**Her present attorney, who is not the attorney who represented her at the hearing, argues that 24-hour notice was insufficient, particularly in light of a letter from DCRLA dated August 29, 1972, promising to inform Ms. Salmon of "any significant occurrences having an effect on your property."

However, the transcript of the hearing (pp. 48-50) shows that at the time Ms. Salmon stated she had been kept up to date with what was happening to her satisfaction by telephone conversations with DCRLA's representatives. Absent some showing of substantial prejudice amounting to more than the fact that her new attorney would present additional arguments, some made possible by doubts about the freeway arising in the meantime, there was not a deprivation of that fundamental fairness and opportunity to be heard required by due process.

United States District Court
for the District of Columbia
A TRUE COPY

JAMES F. DAVEY, CLERK
/s/ [illegible]
Deputy Clerk

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CIVIL ACTION NO. 74-980

DISTRICT OF COLUMBIA REDEVELOPMENT LAND AGENCY, a body corporate, PLAINTIFF, v. THREE PARCELS OF LAND IN SQUARE 556, IN THE DISTRICT OF COLUMBIA, FRANCIS W. RUPPERT – SURVIVING TRUSTEE, ET AL., AND UNKNOWN OWNERS, DEFENDANTS.	)	Judgment Parcel No. NW-1-556

Upon consideration of the verdict of the jury returned herein on April 15, 1975, awarding compensation for Parcel NW-1-556-836 as described in the complaint and proceeding in this cause;

And it further appearing that pursuant to the Act of December 23, 1963, 77 Stat. 577-581, Pub.L. 88-241, Title 16, Secs. 1351 to 1368, inc., D.C. Code (1967 Ed.); the District of Columbia Redevelopment Act of 1945, approved August 2, 1946, as amended, 60 Stat. 790 (5 D.C. Code, sec. 701 et seq.), as amended, and all other acts amendatory of or supplementary to the said Acts, the District of Columbia Redevelopment Land Agency, plaintiff in this cause, on the 28th day of June 1974, filed a declaration of taking in this cause with respect to said parcel and on the same day

deposited in the registry of the court for the use of persons entitled thereto the estimated compensation for said parcel as stated in said declaration of taking, whereby the title to said parcel became vested in the District of Columbia Redevelopment Land Agency in fee simple absolute, subject, however, to the restrictions more fully set forth in the declaration of taking on June 28, 1974.

WHEREUPON, it is this 24 day of June 1975, by this Court;

ADJUDGED, ORDERED AND DECREED that the award for said parcel be and the same is hereby ratified and confirmed, and it is;

FURTHER ADJUDGED AND ORDERED that the parties owning said parcel are entitled to the sum awarded by said verdict as just compensation for the same; that they have judgment against the District of Columbia Redevelopment Land Agency for the amount of said award as follows:

Parcel	Lots	Square	Award	Deposit	Deficiency
NW-1-556-836	800 & 801	556	$41,100.00	$27,000.00	$14,100.00

and it is;

FURTHER ADJUDGED AND ORDERED that the District of Columbia Redevelopment Land Agency shall deposit into the registry of the court the additional sum of $14,100.00 in satisfaction of the judgment, with interest at the rate of 6 percent per annum from the date of taking, June 28, 1974, to the date of deposit.

/s/ Gerhard Gessell
J U D G E

Consented to:

/s/ Thomas P. Carolan
THOMAS P. CAROLAN
Attorney, Department of Justice
739-5086

United States District Court
for the District of Columbia
A TRUE COPY

JAMES F. DAVEY, CLERK

/s/ [illegible]
Deputy Clerk

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CIVIL ACTION No. 74-980

DISTRICT OF COLUMBIA REDEVELOPMENT LAND AGENCY, a body corporate, PLAINTIFF,	)	
v.	)	Order for Delivery of Possession of Parcel No. NW1-556-836
THREE PARCELS OF LAND IN SQUARE 556, IN THE DISTRICT OF COLUMBIA, FRANCIS W. RUPPERT, SURVIVING TRUSTEE, ET AL., AND UNKNOWN OWNERS, DEFENDANTS.	)	

Upon consideration of the motion of plaintiff, by its attorney, for an order requiring all persons in possession or control of Parcel NW1-556-836 consisting of Lots 800 and 801 in Square 556, as set forth in the complaint filed herein, to surrender possession of said lands to the District of Columbia Redevelopment Land Agency immediately, and it appearing to the Court that plaintiff having filed a declaration of taking herein and deposited full compensation in the registry of the court for the taking of said lands is entitled to such possession, it is by the Court this 25 day of June 1976,

ORDERED that all persons in possession or control of the aforesaid parcel shall surrender possession thereof to the District of Columbia Redevelopment Land Agency immediately, and the plaintiff shall forthwith serve a copy of this order by mail upon the defendants whose addresses are known or their attorneys.

/s/ Gerhard Gessel
J U D G E

Consented to:

/s/ Gary M. Peterson
GARY M. PETERSON
Attorney, Department of Justice

22-9-647-23
DEPARTMENT OF JUSTICE

JUN 28 1976

L.C.U.
LANDS DIV. CONDEMN SEC.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JUL 30 1976

DISTRICT OF COLUMBIA REDEVELOPMENT LAND AGENCY, a body corporate, Plaintiff	)	Civil Action No. 74-980
vs.	)	
THREE PARCELS LAND LAND IN SQUARE 556, ETC., Defendants	)	

MOTION FOR STAY

Comes now the defendant, Ozora E. Salmon, by and through her attorney and moves the Court for an Order granting a Stay of this Court's Order granting Delivery of Possession of Parcel No, N.W. 1-556-836 entered on the 25th day of June, 1976, and as grounds therefor, state the following matter and things:

1. The defendant, Ozora E. Salmon, has noted an Appeal in the above cause from this Court's Order entered on June 25, 1976. (See *Exhibit #1*).

2. The defendant will suffer irreparable harm and injury if Stay is not granted during the pendency of Appeal.

3. The Order for Delivery of Possession is based, inter alia.

4. The record is abundantly clear that the Order granting possession to the plaintiff is based upon the Court Order granting Summary Judgment when in truth and in fact, the taking of defendant's property was not a taking for a public use but rather, a taking for semi-public or private use, ie, for use as a Parking Lot by The Bible-Way Church.

5. The modification Order adopted by the D.C. City Counsel was illegal, void and contrary to law.

FILED
JUL 30 1976
JAMES F. DAVEY, Clerk

Denied
July 30, 1976
[illegible]

7. That the defendant, if required to Vacate the Premises, will lose substantial sums of money from her business now and in the future and the business which the plaintiff has disturbed by an unlawful taking, will be destroyed thereby causing defendant to suffer irreparable harm.

8. For such other and further reasons as to the Court may seem just and proper.

WHEREFORE, defendant prays that the Motion for Order granting a Stay be granted.

CLEMENT THEODORE COOPER
Attorney for Defendant
918 F Street, N.W. (300-302)
Washington, D.C. 20004
393-3900
Reg. #2576

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

DISTRICT OF COLUMBIA REDEVELOPMENT LAND AGENCY, a body corporate *Plaintiff,*	)	
vs.	)	Civil No.
	)	74-980
THREE PARCELS OF LAND IN SQUARE 556, IN THE DISTRICT OF COLUMBIA FRANCIS W. RUPPERT, SURVIVING TRUSTEE, ET AL., AND UNKNOWN OWNERS, *Defendant.*	)	

NOTICE OF APPEAL

Notice is hereby given this 24th day of July, 1976 that Defendants, Three Parcels of Land in Square 556, in the District of Columbia, Francis W. Ruppert, Surviving trustee, et al. and unknown owners, hereby appeals to the United States Court of Appeals for the District of Columbia from the judgment of this Court entered on the 25th day of June, 1976 in favor of Plaintiff, District of Columbia Redevelopment Land Agency, against said Defendants.

GARY M. PETERSON, Esq.
U.S. Dept. of Justice
Washington, D.C.
ATTN: Lands Div.
Condemn Sec.

/s/ Clement Theodore Cooper
Attorney for Defendants
Clement Theodore Cooper, Esq.
918 F Street, N.W. (300-302)
Washington, D.C. 20004
393-3900
#2576

FILED
JUL 26 1976
JAMES F. DAVEY
CLERK

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

DISTRICT OF COLUMBIA REDEVELOPMENT LAND AGENCY, a body corporate Plaintiff vs. THREE PARCELS OF LAND IN SQUARE 556, etc. Defendants	)	Civil Action No. 74-980

MEMORANDUM OF POINTS AND AUTHORITIES

Under *Rule 62 (d), F.R. Civ. P.*, the Court is empowered to grant a Stay pending Appeal provided a Supersedeas Bond is filed. No Supersedeas Bond is required here since funds now held in the Registry of the Court under a Declaration of taking have already been deposited by the plaintiff for the use and benefit of the defendant.

Because of the nature of the issues involved and those issues to be reviewed by the U.S. Court of Appeals, a denial of the Motion for Stay will cause defendant to suffer irreparable harm and injury. Furthermore, and on the other hand, plaintiff will not suffer irreparable harm nor injury since it is clear that defendants property will be sold to Bibleway Church for private and pecuniary gain under the disguise of a "semi-public use." The underlying philosophy of all Condemnation Laws relate to Public use for citizens

under the direct administration and control of Government and not for ultimate disposal to religious entities for private gain.

CLEMENT THEODORE COOPER #2576
Attorney for Defendant,
Ozora E. Salmon
918 F Street, N.W. (300-302)
Washington, D.C. 20004
393-3900

CERTIFICATE OF SERVICE

Copy of the foregoing mailed, postage prepaid to Gary M. Peterson, Esquire, U.S. Department of Justice, 9th & Pennsylvania Avenue, N.W., Washington, D.C. ATTN: Lands Division and Condemn Sec., this day of July, 1976.

CLEMENT THEODORE COOPER
Attorney for Defendant

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 76-1765 September Term, 1976

District of Columbia Redevelopment Land Agency, a body corporate

v.

Three Parcels of Land in Square 556, in the District of Columbia, et al.,
Appellants

Civil Action No. 74-980

BEFORE: Fahy, Senior Circuit Judge; Robinson, Circuit Judge

ORDER

Upon consideration of appellant's petition for reconsideration and motion for stay, appellee's motion for summary affirmance, and appellant's opposition thereto, it is

ORDERED by the Court that the District of Columbia Redevelopment Land Agency's motion for summary affirmance is granted, and it is

FURTHER ORDERED by the Court that appellant's petition for reconsideration and motion for stay are dismissed as moot, and it is

FURTHER ORDERED by the Court that this Court's mandate shall be stayed until further order by the Court, and it is

FURTHER ORDERED by the Court that counsel for appellant shall submit within fifteen days a statement setting forth the following: (1) whether appellant and her tenant have secured housing elsewhere and, (2) if not, the length of time reasonably necessary for them to do so. The fifteen day period within which this statement is to be filed will be strictly enforced; a request for an extension will be granted only upon a showing of extraordinary circumstances.

It is FURTHER ORDERED by the Court that a copy of this order and the accompanying explanatory memorandum shall be furnished to Ms. Ozora E. Salmon, the appellant.

Per Curiam

A true copy:
Test: George A. Fisher
United States Court of Appeals
for the District of Columbia Circuit

By: /s/ Patricia Krosel, Deputy Clerk

United States Court of Appeals
for the District of Columbia Circuit

FILED NOV 10 1976

GEORGE A. FISHER
CLERK

MEMORANDUM

In this condemnation proceeding, a jury awarded $41,000 as just compensation for appellant's property on July 16, 1975. No appeal was taken from the final judgment. On June 2, 1976, the District of Columbia Redevelopment Land Agency (DCRLA) moved for an order of possession. No objection was filed, and the District Court granted the motion on June 25, 1976. This appeal is from the order of possession.

Appellant attacks the validity of the District Court's determination that the condemnation is a taking for a public use. Moreover, she claims that, because the property eventually will be used by a church, the taking violates the Establishment Clause of the First Amendment.

Apart from the question whether these considerations are properly before us in light of appellant's failure to appeal from the judgment awarding title to DCRLA, we disagree with them on the merits. The stated purpose for the taking was the elimination of a blighted neighborhood. This public purpose is not rendered impermissible simply because the government agency contemplates transferring the property to private persons. *Berman v. Parker*, 348 U.S. 26, 33-34 (1954). Nor does an eventual sale to a church raise serious Establishment Clause problems. A redevelopment plan for a blighted neighborhood may contempate public and private housing, business establishments, recreational facilities and churches. *Id.* at 35. Thus, we find that the underlying condemnation award was entirely lawful and, therefore, the order of possession is summarily affirmed. Because the affirmance of the District Court order renders appellant's motion for stay

and petition for reconsideration moot, they are dismissed.

In response to an order by this Court, the DCLRA filed an affidavit from Harold J. Wendt, Acting Deputy Administrator, Development Administration, setting forth the need for immediate possession of the property. The affidavit satisfactorily demonstrates that the redevelopment of the property will be substantially postponed unless the property is vacated without undue delay. Nevertheless, we are convinced that the orderly redevelopment of the property will not be frustrated if appellant and her tenant are afforded a reasonable period in which to vacate the premises and secure housing elsewhere. Accordingly, we direct appellant's counsel to file a statement within fifteen days stating whether appellant and her tenant still occupy the premises and, if so, the length of time reasonably necessary for them to move. This statement should be limited to the factual considerations relevant to this single inquiry. So that appellant and her tenant will be afforded the time necessary to secure housing elsewhere, we exercise our power under Federal Rule of Appellate Procedure 41(a) and stay until further order the mandate summarily affirming the District Court order of possession and dismissing the motion for stay and the petition for reconsideration.

No. 76-1449

In the Supreme Court of the United States

OCTOBER TERM, 1976

OZORA E. SALMON, PETITIONER

v.

DISTRICT OF COLUMBIA REDEVELOPMENT LAND AGENCY

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

MEMORANDUM FOR THE DISTRICT OF COLUMBIA REDEVELOPMENT LAND AGENCY IN OPPOSITION

WADE H. MCCREE, JR.,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

In the Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-1449

OZORA E. SALMON, PETITIONER

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DISTRICT OF COLUMBIA REDEVELOPMENT LAND AGENCY

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

MEMORANDUM FOR THE DISTRICT OF COLUMBIA REDEVELOPMENT LAND AGENCY IN OPPOSITION

The petition for a writ of certiorari was not timely filed. The judgment of the court of appeals in this civil suit was entered on November 10, 1976 (Pet. App. 16a-17a). The 90-day period provided by 28 U.S.C. 2101(c) for petitioning in civil cases expired on February 8, 1977. The time for filing a petition for certiorari was not extended, and the petition was not filed until April 20, 1977.

The time limit specified by 28 U.S.C. 2101(c) is jurisdictional. *Toledo Scale Co.* v. *Computing Scale Co.*, 261 U.S. 399, 418. Accordingly, the petition for a writ of certiorari should be denied.

Respectfully submitted.

WADE H. MCCREE, JR.,
Solicitor General.

JUNE 1977.

DOJ-1977-06